



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-7646

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189953.

The College Station Police Department (the "department") received a request for electronic communications sent or received from all mobile computer equipped police patrol units from 12:05 a.m. until 4:05 a.m. on July 24, 2003. You advise that you have redacted Texas license plate numbers pursuant to a previous determination issued in Open Records Letter No. 2001-5574 (2001). We note that you have also redacted some information from the submitted documents pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001). *See* Open Records Decision No. 670 (allowing a governmental body to withhold information within the scope of the statutory predecessor to section 552.117(a)(2) without the necessity of requesting an attorney general decision); *see also* Gov't Code § 552.301(a) (allowing a governmental body to withhold information that is subject to a previous determination). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that

¹You have not submitted any comments explaining the applicability of sections 552.103 and 552.108 to the information at issue. *See* Gov't Code § 552.301(e)(1)(A) (governmental body seeking to withhold information pursuant to exception in chapter 552 must submit written comments stating reasons why stated exception applies). Accordingly, we presume that the city no longer intends to claim sections 552.103 and 552.108 as exceptions to disclosure and find that these claims are waived. *See* Gov't Code §§ 552.301, .302. Thus, we do not address sections 552.103 and 552.108 in this ruling.

the requested information is confidential pursuant to section 552.101 in conjunction with chapter 418 of the Government Code. We understand you to assert that the information at issue is confidential under section 418.176 of the Government Code, which provides in relevant part:

**Sec. 418.176. CONFIDENTIALITY OF CERTAIN INFORMATION
RELATING TO EMERGENCY RESPONSE PROVIDERS.**

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (to be codified at Gov't Code § 418.176). The responsive information you have submitted consists of real-time e-mail communications between police officers created during the time period specified in the request. You advise that the e-mail communications relate to the department's response to a specific incident involving a potentially hazardous chemical. Upon review of your arguments and the information at issue, however, it is apparent to this office that these e-mail communications are not related to the department's response to terrorism or related criminal activity. In this instance, therefore, we find you have not demonstrated that the submitted information relates to an act of terrorism or related criminal activity. Consequently, the submitted information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. As you raise no other exceptions to disclosure, we conclude that the department must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 189953

Enc: Submitted documents

c: Mr. Cameron D. Reynolds
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(w/o enclosures)